

AMENDED IN SENATE JUNE 5, 2007

AMENDED IN ASSEMBLY APRIL 30, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 1187**

---

**Introduced by Assembly Member DeSaulnier**

February 23, 2007

---

An act to amend Sections ~~7370, 8371, 12002.3, and 12006~~ 5521.5, 7370, 8254, 8371, 8436, 12006, and 12157 of the Fish and Game Code, relating to fish.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1187, as amended, DeSaulnier. Sturgeon: *striped bass: salmon: lobster: black bass: penalties.*

~~(1) It is generally unlawful to sell or purchase any fish or amphibian taken in, or brought into, the waters of the state, or brought ashore at any point in the state, except as provided by the Fish and Game Code, and by regulation. Further, it is generally unlawful to buy, sell, or possess in any place of business where fish are bought, sold, or processed, any fish or amphibian taken on any boat, barge, or vessel that carries sport fishermen. A violation of that section is generally punishable by a fine of not less than \$2,000 or more than \$7,500.~~

~~This bill, would impose a penalty of not less than \$15,000 or more than \$40,000 on a person required to have a sportfishing license, for a violation of those provisions involving the illegal sale or purchase of sturgeon.~~

~~(1) Existing law prohibits any person from taking abalone for commercial purposes in specified districts. Existing law establishes a rebuttable presumption, affecting the burden of producing evidence,~~

*that a person who is required to obtain a license to take a fish, reptile, or amphibia, and who takes or possesses more than 12 individual abalone or takes abalone in excess of the annual bag limit, possesses the abalone for commercial purposes.*

*This bill would repeal the rebuttable presumption that a person who takes or possesses a specified amount of abalone possesses it for commercial purposes. The bill would make the possession of specified amounts of abalone prima facie evidence that it is possessed for commercial purposes.*

(2) Under existing law, except as specified, it is unlawful to buy or sell, or to offer to buy or sell, a whole sturgeon, or any part thereof, including eggs, or to possess sturgeon, or parts thereof, including eggs, in any place where fish are bought, possessed for sale, or sold, or where food is offered for sale, or in any truck or other conveyance operated by or for a place so selling or possessing fish.

*Existing law prohibits the taking of lobsters for commercial purposes except under a valid lobster permit.*

*Existing law generally prohibits the sale or purchase of fish of the family Centrarchidae (Sacramento perch, crappie, black bass, and sunfish), other than cultured fish.*

*This bill, with certain exceptions, would make a violation of that provision subject to a fine of not less than \$15,000 or more than \$40,000, or imprisonment in a county jail not to exceed one year, or both the fine and imprisonment. The it unlawful to take or possess for commercial purposes, buy, or sell, or to offer to buy or sell, any whole sturgeon, striped bass, or salmon, or any part thereof, including, but not limited to, eggs, thereby imposing a state-mandated local program by creating a new crime. The bill would make the possession of specified amounts of sturgeon prima facie evidence that it is possessed for commercial purposes.*

*This bill would limit to commercial purposes the prohibition on the sale or purchase, and would prohibit the taking or possession for commercial purposes, of fish of the family Centrarchidae, thereby imposing a state-mandated local program by creating new crimes.*

*The bill would make a violation of the provisions prohibiting the sale, purchase, or possession of sturgeon, striped bass, salmon, lobster, or black bass for commercial purposes subject to a fine of not less than \$15,000 or more than \$40,000, or imprisonment in a county jail not to exceed one year, or both the fine and imprisonment.*

*The bill would ~~authorize require~~ a court to permanently revoke any commercial fishing license; or commercial fishing permit, ~~or and authorize the court to permanently revoke any sportfishing license issued to the a violator by the Department of Fish and Game, and would.~~ The bill would authorize the seizure and forfeiture of any vessel, diving or other fishing gear or apparatus, or vehicle used in the commission of an offense. The bill would provide that 50% of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to those provisions is to be allocated for the support of the Special Operations Unit of the department, and used for law enforcement purposes.*

*(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 5521.5 of the Fish and Game Code is  
2     amended to read:  
3     5521.5. (a) In addition to the moratorium imposed by Section  
4     5521, and notwithstanding any other provision of law, it is unlawful  
5     to take abalone for commercial purposes in District 6, 7, 16, 17,  
6     or 19A, in District 10 north of Point Lobos, or in District 20  
7     between Southeast Rock and the extreme westerly end of Santa  
8     Catalina Island.  
9     (b) ~~There shall be a rebuttable presumption, affecting the burden~~  
10    ~~of producing evidence, that a person who is required to obtain a~~  
11    ~~license pursuant to Section 7145 and who takes or possesses more~~  
12    ~~than 12 individual abalone or takes abalone in excess of the annual~~  
13    ~~bag limit possesses the abalone for commercial purposes. For a~~  
14    ~~person who is required to obtain a license pursuant to Section~~  
15    ~~7145, the possession of more than 12 individual abalone or abalone~~  
16    ~~in excess of the annual bag limits is prima facie evidence that the~~  
17    ~~person possesses the abalone for commercial purposes.~~

## 1     SECTION 1.

2     SEC. 2. Section 7370 of the Fish and Game Code is amended  
3 to read:

4     ~~7370. It is unlawful to buy or sell, or to offer to buy or sell, a~~  
5 ~~whole sturgeon, or any part thereof, including eggs, or to possess~~  
6 ~~sturgeon, or parts thereof, including eggs, in any place where fish~~  
7 ~~are bought, possessed for sale, or sold, or where food is offered~~  
8 ~~for sale, or in any truck or other conveyance operated by or for a~~  
9 ~~place so selling or possessing fish except as follows:~~

10     7370. (a) *It is unlawful to take or possess for commercial*  
11 *purposes, buy or sell, or to offer to buy or sell, any whole sturgeon,*  
12 *striped bass, or salmon, or any part thereof, including, but not*  
13 *limited to, eggs, except as follows:*

14     (a)

15     (1) A sturgeon, or parts thereof, that is taken or possessed by,  
16 and is the cultured progeny of, an aquaculturist who is registered  
17 under Section 15101, may be sold or purchased subject to  
18 regulations of the commission.

19     ~~(b) A sturgeon, or parts thereof, that is taken legally in another~~

20     (2) *A sturgeon, or parts thereof, that is taken commercially in*  
21 *another state that permits the sale of the fish and lawfully imported*  
22 *under Section 2363, may be possessed, sold, or purchased.*

23     ~~(c)~~

24     (3) Sturgeon, or parts thereof, taken pursuant to a sportfishing  
25 license in accordance with Section 7230.

26     (4) *Salmon taken pursuant to Article 4 (commencing with*  
27 *Section 8210.2) of Chapter 2 of Part 3.*

28     (5) *Striped bass or salmon taken pursuant to Section 8371.*

29     (b) *For the purposes of this section, it is prima facie evidence*  
30 *that a sturgeon, or parts thereof, is possessed for commercial*  
31 *purposes if the possession of sturgeon is more than two times the*  
32 *legal sport daily or yearly limit, or includes any fish greater than*  
33 *76 inches in total length.*

34     SEC. 3. Section 8254 of the Fish and Game Code is amended  
35 to read:

36     8254. (a) Lobsters shall not be taken for commercial purposes  
37 except under a valid lobster permit issued to that person that has  
38 not been suspended or revoked, subject to regulations adopted by  
39 the commission.

(b) Every person who takes, assists in taking, possesses, or transports lobsters for commercial purposes while on any boat, barge, or vessel, or who uses or operates or assists in using or operating any boat, net, trap, line, or other appliance to take lobsters for commercial purposes, shall have a valid lobster permit.

(c) The permit fee for a lobster permit is two hundred sixty-five dollars (\$265).

(d) The fee for a lobster crewmember permit is one hundred twenty-five dollars (\$125). ~~This subdivision shall become operative on April 1, 1997.~~

~~SEC. 2.~~

~~SEC. 4.~~ Section 8371 of the Fish and Game Code is amended to read:

8371. Striped bass *or salmon*, or parts thereof, may be sold only under the following conditions:

(a) If the striped bass, or parts thereof, is taken or possessed by, and is the cultured progeny of, an aquaculturist who is registered under Section 15101, that striped bass may be sold or purchased subject to regulations of the commission.

(b) If the striped bass, or parts thereof, is taken legally in another state that permits the sale of that fish and if the fish is lawfully imported under Section 2363, the striped bass, or parts thereof, may be possessed, sold, or purchased.

*(c) If the salmon, or parts thereof, is taken legally in another state that permits the sale of salmon, in accordance with Article 4 (commencing with Section 8210.2), and is lawfully imported under Section 2363, the salmon, or parts thereof, may be possessed, sold, or purchased.*

~~SEC. 3.~~ ~~Section 12002.3 of the Fish and Game Code is amended to read:~~

~~12002.3.—(a) Notwithstanding any other provision of law, a violation of Section 7121 for the sale, purchase, or receipt of fish taken by a person required to be licensed pursuant to Section 7145 is punishable by a fine of not less than two thousand dollars (\$2,000) or more than seven thousand five hundred dollars (\$7,500), except as provided in subdivisions (b) and (c).~~

~~(b) If the violation in question involved the illegal sale or purchase of abalone or sturgeon taken by a person required to be licensed pursuant to Section 7145, the violation is punishable by~~

1 a fine of not less than fifteen thousand dollars (\$15,000) or more  
2 than forty thousand dollars (\$40,000).

3 ~~(e) If the violation in question involved a person who knowingly~~  
4 ~~purchased or received for commercial purposes, fish taken by a~~  
5 ~~person required to be licensed pursuant to Section 7145, the~~  
6 ~~violation is punishable by a fine of not less than seven thousand~~  
7 ~~five hundred dollars (\$7,500) or more than fifteen thousand dollars~~  
8 ~~(\$15,000).~~

9 *SEC. 5. Section 8436 of the Fish and Game Code is amended*  
10 *to read:*

11 8436. Except as provided in Section 8436.5, ~~no~~ fish of the  
12 family Centrarchidae (Sacramento perch, crappie, black bass, and  
13 sunfish) ~~may shall not be taken or possessed for commercial~~  
14 ~~purposes, sold, or purchased, other than fish which that are grown~~  
15 ~~cultured pursuant to Division 12 (commencing with Section~~  
16 ~~15000).~~

17 ~~SEC. 4.~~

18 *SEC. 6. Section 12006 of the Fish and Game Code is amended*  
19 *to read:*

20 12006. Notwithstanding Section 12002, the punishment for a  
21 violation of Section 7370, 8254, *or 8436, if the violation involves*  
22 *black bass*, is a fine of not less than fifteen thousand dollars  
23 (\$15,000), or more than forty thousand dollars (\$40,000),  
24 imprisonment in a county jail not to exceed one year, or both the  
25 fine and imprisonment. The court ~~may shall~~ permanently revoke  
26 any commercial fishing license, ~~commercial fishing permit, or or~~  
27 *commercial fishing permit, and may permanently revoke any*  
28 sportfishing license issued to the violator by the department. Any  
29 vessel, diving or other fishing gear or apparatus, or vehicle used  
30 in the commission of an offense subject to this section may be  
31 seized and may be ordered forfeited by the court pursuant to  
32 subdivision (c) of Section 12157. Fifty percent of the revenue  
33 deposited in the Fish and Game Preservation Fund from fines and  
34 forfeitures collected pursuant to this section shall be allocated for  
35 the support of the Special Operations Unit of the department, and  
36 used for law enforcement purposes.

37 *SEC. 7. Section 12157 of the Fish and Game Code is amended*  
38 *to read:*

39 12157. (a) Except as provided in subdivision (b), the judge  
40 before whom any person is tried for a violation of any provision

1 of this code, or regulation adopted pursuant thereto, may, upon  
2 the conviction of the person tried, order the forfeiture of any device  
3 or apparatus that is designed to be, or is capable of being, used to  
4 take birds, mammals, fish, reptiles, or amphibia and that was used  
5 in committing the offense charged.

6 (b) The judge shall, if the offense is punishable under Section  
7 12008 of this code or under subdivision (c) of Section 597 of the  
8 Penal Code, order the forfeiture of any device or apparatus that is  
9 used in committing the offense, including, but not limited to, any  
10 vehicle that is used or intended for use in delivering, importing,  
11 or exporting any unlawfully taken, imported, or purchased species.

12 (c) (1) The judge may, for conviction of a violation of either  
13 of the following offenses, order forfeiture of any device or  
14 apparatus that is used in committing the offense, including, but  
15 not limited to, any vehicle used or intended for use in committing  
16 the offense:

17 (A) Section 2000 relating to deer, elk, antelope, feral pigs,  
18 European wild boars, black bears, and brown or cinnamon bears.

19 (B) Any offense that involves the sale, purchase, or possession  
20 of abalone, *sturgeon*, *salmon*, *striped bass*, *lobster*, or *black bass*  
21 for commercial purposes.

22 (2) In considering an order of forfeiture under this subdivision,  
23 the court shall take into consideration the nature, circumstances,  
24 extent, and gravity of the prohibited act committed, the degree of  
25 culpability of the violator, the property proposed for forfeiture,  
26 and other criminal or civil penalties imposed on the violator under  
27 other provisions of law for that offense. The court shall impose  
28 lesser forfeiture penalties under this subdivision for those acts that  
29 have little significant effect upon natural resources or the property  
30 of another and greater forfeiture penalties for those acts that may  
31 cause serious injury to natural resources or the property of another,  
32 as determined by the court. In determining whether or not to order  
33 forfeiture of a vehicle, the court shall, in addition to any other  
34 relevant factor, consider whether the defendant is the owner of the  
35 vehicle and whether the owner of the vehicle had knowledge of  
36 the violation.

37 (3) It is the intent of the Legislature that forfeiture not be ordered  
38 pursuant to this subdivision for minor or inadvertent violations of  
39 Section 2000, as determined by the court.

1 (d) Any device or apparatus ordered forfeited shall be sold,  
2 used, or destroyed by the department.

3 (e) (1) The proceeds from all sales under this section, after  
4 payment of any valid liens on the forfeited property, shall be paid  
5 into the Fish and Game Preservation Fund.

6 (2) A lien in which the lienholder is a conspirator is not a valid  
7 lien for purposes of this subdivision.

8 (f) The provisions in this section authorizing or requiring a judge  
9 to order the forfeiture of a device or apparatus also apply to the  
10 judge, referee, or juvenile hearing officer in a juvenile court action  
11 brought under Section 258 of the Welfare and Institutions Code.

12 (g) For purposes of this section, a plea of nolo contendere or no  
13 contest, or forfeiture of bail, constitutes a conviction.

14 (h) Neither the disposition of the criminal action other than by  
15 conviction nor the discretionary refusal of the judge to order  
16 forfeiture upon conviction impairs the right of the department to  
17 commence proceedings to order the forfeiture of fish nets or traps  
18 pursuant to Section 8630.

19 *SEC. 8. No reimbursement is required by this act pursuant to*  
20 *Section 6 of Article XIII B of the California Constitution because*  
21 *the only costs that may be incurred by a local agency or school*  
22 *district will be incurred because this act creates a new crime or*  
23 *infraction, eliminates a crime or infraction, or changes the penalty*  
24 *for a crime or infraction, within the meaning of Section 17556 of*  
25 *the Government Code, or changes the definition of a crime within*  
26 *the meaning of Section 6 of Article XIII B of the California*  
27 *Constitution.*